

REDUCING INCIDENCE OF SEXUAL HARASSMENT AND SEXUAL ASSAULT  
IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION FLEET

by  
Zachary P. Cress

A capstone project submitted to Johns Hopkins University in conformity with the  
requirements for the degree of Master of Arts in Public Management

Baltimore, Maryland  
April, 2018

© 2018 Zachary P. Cress  
All Rights Reserved

## ABSTRACT

The National Oceanic and Atmospheric Administration (NOAA) operates a fleet of 16 research and survey ships crewed by a mix of commissioned officers and civilian wage mariners. The shipboard environment presents unique challenges to prevention of sexual harassment and assault. This capstone proposes a policy to reduce incidence of sexual harassment and assault on NOAA ships by partnering with the U.S. Coast Guard to facilitate investigation of allegations and enact punitive measures against guilty parties.

Advisor: Paul Weinstein

## ACKNOWLEDGEMENTS

I would like to thank Mr. Gregory Raymond, Chief of Staff of NOAA's Office of Marine and Aviation Operations and Dr. Fern Gibbons and Commander Jason Smith, USCG of the Senate Committee on Commerce, Science, and Transportation professional staff for their insight and guidance. I would also like to thank Lieutenant Commander Wendy Lewis, NOAA for helping make this topic a priority for NOAA and Congress through her contributions to previous legislation on sexual harassment and assault prevention at NOAA.

All statements of fact, opinion, or analysis expressed in this academic research paper are those of the author and do not reflect official positions or views of the U.S. Department of Commerce or National Oceanic and Atmospheric Administration, United States Coast Guard, United States Senate, or any other U.S. Government agency.

## TABLE OF CONTENTS

ACTION-FORCING EVENT .....	1
STATEMENT OF THE PROBLEM .....	1
HISTORY AND BACKGROUND .....	6
POLICY PROPOSAL.....	14
POLICY ANALYSIS .....	17
POLITICAL ANALYSIS .....	25
RECOMMENDATION .....	30
CURRICULUM VITAE.....	33

## LIST OF TABLES

Table 1. Charges Alleging Sexual Harassment (Fiscal Years 2010 – 2017). .....	2
---	---

## LIST OF FIGURES

Figure 1. Number of Victims of Sexual Assault in the Coast Guard.....	23
Figure 2. Public Opinion on Recent Attention to Sexual Harassment.....	27

MEMORANDUM FOR: Rear Admiral Michael J. Silah, NOAA  
Director, NOAA Corps and  
Office of Marine and Aviation Operations

FROM: Zachary Cress

SUBJECT: Sexual Harassment and Assault Prevention on NOAA  
Ships

#### ACTION-FORCING EVENT

On December 23, 2016, President Obama signed into law Subtitle C—Sexual Harassment and Assault Prevention at the National Oceanic and Atmospheric Administration (NOAA) of the National Defense Authorization Act for Fiscal Year 2017.<sup>1</sup> This law required the Secretary of Commerce, acting through the Under Secretary for Oceans and Atmosphere, to develop within one year (i.e. by December 23, 2017) a policy on the prevention of and response to sexual harassment involving employees of the National Oceanic and Atmospheric Administration, members of the NOAA Commissioned Officer Corps, and individuals who work with the Administration. Although this requirement has been partially met, cases of harassment on board NOAA ships have continued, including an event last month that necessitated diverting a ship from its planned mission to return to port for an investigation and removal of employees.

#### STATEMENT OF THE PROBLEM

Federal regulations define sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature and is

---

<sup>1</sup> *National Defense Authorization Act for Fiscal Year 2017*, Public Law 114-328, (2016): 3541-3547.

generally prohibited by Title VII of the Civil Rights Act of 1964.<sup>2,3</sup> Sexual assault is defined by individual states, but the U.S. Department of Justice broadly defines it as any type of sexual contact or behavior that occurs without explicit consent of the recipient.<sup>4</sup> Statistics of the prevalence of sexual harassment and assault in the workplace vary, but the U.S. Equal Employment Opportunity Commission (EEOC) reports that depending on the survey questions used, up to 85 percent of women report having experienced sexual harassment in the workplace, and that nearly 17 percent of sexual harassment charges filed in Fiscal Year 2017 were filed by men.<sup>5,6</sup>

**Table 1. Charges Alleging Sexual Harassment (Fiscal Years 2010 – 2017).** This table shows charge data for sexual harassment allegations, i.e., harassment of a sexual nature filed with the Equal Employment Opportunity Commission.<sup>7</sup>

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
<b>Receipts</b>	7,944	7,809	7,571	7,256	6,862	6,822	6,758	6,696
<b>% of Charges Filed By Males</b>	16.2%	16.1%	17.8%	17.6%	17.5%	17.1%	16.6%	16.5%
<b>Resolutions</b>	8,959	9,195	8,924	7,758	7,037	7,289	7,433	7,511

<sup>2</sup> Sexual Harassment, 29 C.F.R. § 1604.11 (2009)

<sup>3</sup> Civil Rights Act of 1964, Pub. L. 88-352

<sup>4</sup> U.S. Department of Justice, “Sexual Assault,” <https://www.justice.gov/ovw/sexual-assault> (accessed January 18, 2018).

<sup>5</sup> Feldblum, C. and Lipnic, V., “Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace, U.S. Equal Opportunity Employment Commission,” June 2016. Available online at [https://www.eeoc.gov/eeoc/task\\_force/harassment/upload/report.pdf](https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf). (accessed January 20, 2018).

<sup>6</sup> U.S. Equal Employment Opportunity Commission, “Charges Alleging Sex-Based Harassment (Charges filed with EEOC) FY 2010 – FY 2017,” [https://www.eeoc.gov/eeoc/statistics/enforcement/sexual\\_harassment\\_new.cfm](https://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment_new.cfm) (accessed January 27, 2018).

<sup>7</sup> Ibid.

Sexual harassment and assault in the maritime industry in general is not well-studied, but a qualitative study indicated that experiences of sexual harassment were commonplace for women working on ships, owing to the residential and hierarchical work environment in a male-dominated industry.<sup>8</sup> Employees on ships must live and work together in an isolated environment, 24 hours a day for weeks or months at a time, separated from sexual partners and support systems ashore. This study found common reports of hostile workplace environments experienced by female seafarers, ranging from gossip in relation to their sexual behavior and relationships to harassing phone calls from shipmates, to more extreme behaviors such as placing pornographic pictures in their living quarters, and physical touching of their bodies while sleeping off duty.<sup>9</sup> Feelings of having to tolerate these behaviors to succeed in a male-dominated industry was a common theme discussed by respondents in this study.

NOAA's fleet of 16 research and survey ships employ hundreds of seagoing employees, including approximately 100 commissioned officers,<sup>10</sup> 588 licensed or credentialed wage mariners in permanent or relief positions, in addition to varying numbers of technicians, scientists, and student interns and volunteers, with full berthing complements ranging from 14 (NOAA Ship *Ferdinand R. Hassler*) to 60 (NOAA Ship *Ronald H. Brown*).<sup>11</sup> The Office of Marine and Aviation Operations (OMAO) has only kept centralized records of reports of harassment cases since May of 2017, and in 2017

---

<sup>8</sup> Michelle A. Thomas, "Sexual Harassment in a Residential Occupation: The Experiences of Women Seafarers," *Health Education Journal* 65, no. 2 (2006): 170–179.

<sup>9</sup> Ibid.

<sup>10</sup> The NOAA Commissioned Officer Corps has an authorized strength of 321 officers, about one-third of whom may be assigned to ship-based billets at any one time based on the current fleet structure of 16 ships. Other officers are assigned to aviation billets and staff and leadership billets ashore.

<sup>11</sup> Office of Marine and Aviation Operations, "Marine Operations – Ships," <https://www.oma.noaa.gov/learn/marine-operations/ships>. (accessed January 27, 2018).

alone, 21 cases of harassment were reported to NOAA's Workforce Management Office through the Department of Commerce's existing "955 Process," a reporting mechanism that provides employees with an expedited process for reviewing allegations of harassment.<sup>12,13</sup> Of these 20 cases, 15 were from NOAA ships. Four cases of sexual assault were reported, with only one case so far substantiated. The number of reported cases of harassment is nearly equal to the number of ships in the NOAA fleet, however the true number of incidences of harassment and assault are likely higher, as harassment and assault in the workplace are historically underreported. Given NOAA's 12,000 employee workforce, and compared to the rate of workplace harassment in the public at large, 20 reported cases of harassment organization-wide is likely low and does not capture all incidences. The EEOC reports that approximately 70 percent of harassed individuals never even discuss harassment with a supervisor, and that 87 to 94 percent of individuals do not file any formal complaint.<sup>14</sup> If this rate were accurate within NOAA, the true number of cases in 2017 would be closer to 150.

Sexual harassment and assault in the workplace impact both the individuals involved and the organization as a whole. Victims of sexual harassment experience depression, anxiety, and post-traumatic stress disorder (PTSD)<sup>15</sup> and almost 20 percent of female rape victims and almost 10 percent of male rape victims say they lost time from

---

<sup>12</sup> U.S. Department of Commerce, "Report to Congress On Sexual Assaults in the National Oceanic and Atmospheric Administration For Calendar Year 2017," March 15, 2018.

<sup>13</sup> U.S. Department of Commerce, "Allegations of Harassment Prohibited by Federal Law, Department Administrative Order 202-955," [http://www.osec.doc.gov/opog/dmp/daos/dao202\\_955.html](http://www.osec.doc.gov/opog/dmp/daos/dao202_955.html). Effective March 28, 2000.

<sup>14</sup> Feldblum, 16.

<sup>15</sup> Spector, Nicole, "The Hidden Health Effects of Sexual Harassment," November 10, 2017, <https://www.nbcnews.com/better/health/hidden-health-effects-sexual-harassment-ncna810416>. (accessed January 22, 2018).



work as a result.<sup>16</sup> Harassment and assault result in lost time to the organization, low employee morale and retention, and monetary costs from investigations and settlements. Each day at sea lost due to diversion from mission results in lost environmental data collection effort, and on average \$41,000 in variable direct and indirect costs.<sup>17</sup> Investigations, too, are expensive—a recent investigation conducted by a private investigator on behalf of OMAO of a case of harassment aboard a NOAA ship cost approximately \$175,000.<sup>18</sup> As an employer, the government is also liable for civil compensatory and punitive damages up to \$300,000 per person.<sup>19</sup>

Retention of skilled science, technology, engineering, and math (STEM) and maritime professionals in NOAA may be damaged, especially women, who only hold about one quarter of all STEM jobs,<sup>20</sup> and as little as two percent of the world's maritime workforce.<sup>21</sup> Given the long lead time between initial reporting of harassment and final resolution and disciplinary action (approximately eight months per case), morale and productivity may suffer as employees live and work alongside their harassers in a hostile working environment.

---

<sup>16</sup> Tjaden, P. and Thoennes, N., *Extent, Nature, and Consequences of Rape Victimization: Findings from the National Violence Against Women Survey (NCJ 210346)*. (U.S. Department of Justice, 2006). <https://www.ncjrs.gov/pdffiles1/nij/210346.pdf>.

<sup>17</sup> Based on Fiscal Year 2015 Marginal Cost of Using the NOAA Fleet, from Abt Associates Inc. And Corona Environmental Consulting, *NOAA Fleet Societal Benefit Study*, September 2017.

<sup>18</sup> Gregory Raymond, Chief of Staff, NOAA Office of Marine and Aviation Operations, personal communication, January 27, 2018.

<sup>19</sup> U.S. Equal Employment Opportunity Commission, "Remedies For Employment Discrimination," <https://www.eeoc.gov/employers/remedies.cfm>. (accessed January 28, 2018).

<sup>20</sup> David N. Beede et al., "Women in STEM: A Gender Gap to Innovation," (U.S. Department of Commerce, Economics and Statistics Administration, 2011), <http://www.esa.doc.gov/sites/default/files/womeninstemagaptoinnovation8311.pdf>. August 2011.

<sup>21</sup> Anna MacNeil and Samrat Ghosh, "Gender Imbalance in the Maritime Industry: Impediments, Initiatives and Recommendations," *Australian Journal of Maritime & Ocean Affairs* 9, no. 1 (January 2, 2017): 42–55, <https://doi.org/10.1080/18366503.2016.1271262>.

## HISTORY AND BACKGROUND

Title VII of the Civil Rights Act of 1964 laid the groundwork for legal harassment law by including sex, among race, color, religion, and national origin, as a basis for which employers may not discriminate. The Equal Employment Opportunity Commission issued its first Guidelines on Sexual Harassment in 1980, declaring sexual harassment to be a violation of Title VII, and defined sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.”<sup>22</sup> This was tested by the U.S. Supreme Court in 1986 in *Meritor Savings Bank v. Vinson*, which ruled that severe or pervasive sexual harassment of an employee violates federal law, and affirmed that if known by the employer, it is the employer’s responsibility to take action against perpetrators.<sup>23</sup>

Because it is historically underreported, as described in the previous section of this memorandum, specific case knowledge of the history of sexual harassment and assault on NOAA ships is nonexistent, though it has likely been ongoing as long as mixed-gender crews have sailed together on either NOAA’s ships, or its predecessor agencies (the U.S. Coast and Geodetic Survey and the U.S. Bureau of Fisheries). The issue gained the attention of Congress in November 2014, when the Senate Committee on Commerce, Science, and Transportation received whistleblower allegations of sexual harassment and assault involving individuals conducting work on behalf of NOAA.<sup>24</sup> This precipitated investigation by the Senate Commerce Committee into NOAA’s

---

<sup>22</sup> U.S. Equal Employment Opportunity Commission, “Policy Guidance on Current Issues of Sexual Harassment,” Notice N-915-050, Last updated March 19, 1990. Available at <https://www.eeoc.gov/policy/docs/currentissues.html>.

<sup>23</sup> *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986)

<sup>24</sup> U.S. Congress, Senate, Committee on Commerce, Science, and Transportation, *National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention Act: Report (to Accompany S. 2206)*, 114<sup>th</sup> Cong., 2nd sess., 2016, S. Rep. 114-384.

policies to address sexual harassment and assault, citing NOAA's unique workforce and the difficulties encountered by individuals deployed on ships and aircraft.

To frame the context, it is important to note that in the United States, the maritime industry in general functions in two different realms: military and civilian. The U.S. Department of Defense is subject to the Uniform Code of Military Justice (UCMJ), which defines implementation of military law. Laws and rules governing the civilian merchant maritime world are enforced by the U.S. Coast Guard. The workforce on NOAA's fleet of research ships is unique in that it is neither completely military nor civilian. NOAA's ships are commanded by officers of the NOAA Commissioned Officer Corps, which is one of the United States seven uniformed services, but is not subject to UCMJ, and crewed by civilian wage-grade credentialed and licensed mariners subject to U.S. Coast Guard regulation, but as federal employees are not employed at-will.

On October 26, 2015, Senator Dan Sullivan of Alaska, Chairman of the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard, introduced Senate bill 2206 to reauthorize the NOAA Commissioned Officer Corps Act of 2002 and to reauthorize the Hydrographic Services Improvement Act of 1998. This bill contained language that would have required NOAA to establish a policy to address sexual harassment and direct the Secretary of Commerce to place equal employment opportunity (EEO) personnel in all regions of operation to provide support, and would have required the NOAA Director of the Civil Rights Office to track and report harassment cases to the Under Secretary for Oceans and Atmosphere. This bill would also have required the Secretary of Commerce to establish a policy to address sexual assault similar to the Coast Guard's Sexual Assault Response and Prevention Program, consisting of a victim

advocate program, a 24-hour reporting hotline, a list of resources available to victims, a prohibition of and consequences for retaliatory actions against someone who reports a sexual assault, and a process for facilitating unit transfer requests by victims. This bill was reported by Chairman John Thune on November 28, 2016 to the Senate, but not voted on. Instead, the sections of this bill relating to sexual harassment and assault prevention were added in conference to the National Defense Authorization Act for Fiscal Year 2017,<sup>25</sup> becoming law on December 23 of that year.

### ***Sexual Harassment and Assault in Maritime and Other Transportation Communities***

In the United States, most professional licenses are administered by individual states: medical practice, legal practice, teaching, driving, and so forth. Few professional licenses are solely regulated by federal law, but those professions dealing in interstate transportation do. Under the Department of Transportation (DOT), aircraft pilots are licensed by the Federal Aviation Administration (FAA), railroad conductors are licensed by the Federal Railroad Administration (FRA), and currently under the Department of Homeland Security, merchant mariners are licensed and credentialed by the U.S. Coast Guard. Commercial driver's licenses (CDL) are regulated by individual states, but must also meet standards of the DOT.

There is no precedence for license suspension or revocation for harassing or assaulting behaviors among federally regulated transportation certification bodies. FAA regulations currently contain no provisions for suspension or revocation of pilot licenses

---

<sup>25</sup> U.S. Congress, House of Representatives, *National Defense Authorization Act for Fiscal year 2017: Conference Report (to Accompany S. 2943)*, 114<sup>th</sup> Cong., 2nd sess., 2016, H. Rept. 114-840.

for harassment or sexual assault,<sup>26</sup> nor do FRA regulations for railroad conductors.<sup>27</sup> DOT regulations do not specifically include provisions for suspension or revocation of CDLs for harassment or assault,<sup>28</sup> but recent legislation permanently disqualifies individuals from operating a commercial motor vehicle in cases where it is used to commit acts of sex trafficking.<sup>29</sup>

It is important to note that in parallel, the issue of sexual harassment and assault in the U.S. maritime sector was also gaining public interest in June of 2016 when U.S. Department of Transportation Secretary Anthony Foxx controversially ordered the Maritime Administration (MARAD) to suspend the U.S. Merchant Marine Academy's (USMMA) Sea Year program in response to reports of sexual harassment and assault, bringing home 116 midshipmen who were already at sea.<sup>30,31</sup> The USMMA's Sea Year is a period during which midshipmen of the USMMA sail as cadets on U.S.-flagged merchant vessels to gain practical experience required in fulfillment of their merchant marine licenses. Though its ranks do not belong to one of the seven U.S. uniformed services, the USMMA is one of five U.S. service academies, and is culturally somewhat similar to NOAA in that its mariners are neither completely military nor civilian. Of additional interest, NOAA Corps officers were trained at the USMMA until joining the U.S. Coast Guard Officer Candidate School at the U.S. Coast Guard Academy in 2013.

---

<sup>26</sup> Certification: Pilots, Flight Instructors, and Ground Instructors 14 C.F.R. § 61 et seq.

<sup>27</sup> Criteria for Revoking Certification 49 C.F.R. § 242.403

<sup>28</sup> Commercial Driver's License Standards; Requirements and Penalties 49 C.F.R. § 383 et seq.

<sup>29</sup> *No Human Trafficking on Our Roads Act*, Public Law 115-106, (2018).

<sup>30</sup> "At Closed Meeting, Details of USMMA Sea Year Problems," *The Maritime Executive*. June 24, 2016. <https://maritime-executive.com/article/marad-discusses-sea-year-decision-at-closed-meeting#gs.F9AHhyI> (accessed February 3, 2018).

<sup>31</sup> Lisa Rein, "Merchant Marine Midshipmen Endure Rough Waters as Sexual Misconduct Roils Their Ranks," *Washington Post*, July 18, 2016, <https://www.washingtonpost.com/news/powerpost/wp/2016/08/11/merchant-marine-academy-under-fire-for-sexual-assault-allegations/>.

The 2017 National Defense Authorization Act also contained provisions requiring the Secretary of Transportation to establish policies addressing sexual harassment and assault at the USMMA.<sup>32</sup> MARAD resumed USMMA's Sea Year in February of 2017, using only three shipping companies that they determined to meet their criteria regarding sexual harassment and assault prevention and response, which include annual company-wide zero tolerance messages, and annual sexual assault and harassment prevention training.<sup>33,34</sup>

Sexual harassment and assault prevention in the private maritime sector is managed by individual employers. Except for those codified from the 2017 National Defense Authorization Act that apply to the USMMA,<sup>35</sup> there are no federal laws or regulations on prevention or response of harassment by merchant mariners. In August 2017, the non-profit Ship Operations Cooperative Program released a best practices guide for constituent maritime companies to provide a model for internal company policies, including employee training and complaint reporting, though its adoption does not specifically mitigate any company's liability or meet any Federal or state requirements.<sup>36</sup>

Title 46 of the U.S. Code, which covers all laws pertaining to shipping, provides the Secretary of Homeland Security the authority to suspend or revoke a license, certificate of registry, or merchant mariner's document when the holder has committed an

---

<sup>32</sup> *National Defense Authorization Act for Fiscal Year 2017*, Public Law 114-328, (2016): 3510-3514.

<sup>33</sup> "United States Merchant Marine Academy Announces Resumption of Commercial Sea Year," News Release MARAD 01-17. [https://www.marad.dot.gov/newsroom/news\\_release/2017/united-states-merchant-marine-academy-announces-resumption-of-commercial-sea-year/](https://www.marad.dot.gov/newsroom/news_release/2017/united-states-merchant-marine-academy-announces-resumption-of-commercial-sea-year/)

<sup>34</sup> "Summary of Sea Year Criteria," United States Department of Transportation, Maritime Administration, <https://www.marad.dot.gov/criteria/> (accessed February 10, 2018).

<sup>35</sup> 46 U.S. Code §51318

<sup>36</sup> "Best Practices Guide on Prevention of Sexual Assault & Sexual Harassment in the U.S. Merchant Marine," Ship Operations Cooperative Program

act of misconduct,<sup>37</sup> which is further defined in Title 46 of the Code of Federal Regulations as “human behavior which violates some formal, duly established rule.”<sup>38</sup> This has been interpreted by some in the maritime community as grounds for suspension and revocation,<sup>39</sup> though it is unknown if or to what extent this interpretation is shared by the U.S. Coast Guard. Federal regulations list offenses for which an investigating officer may seek revocation of a merchant mariner credential, and include assault, misconduct, rape and sexual molestation, murder or attempted murder, mutiny, perversion, sabotage, smuggling of aliens, incompetence, interference with a master, ship’s officers, or government officials in performance of official duties, and wrongful destruction of ship’s property.<sup>40</sup>

### *Actions Undertaken by NOAA*

Prior to passage of the law requiring several actions by NOAA, NOAA has implemented a series of piecemeal sexual harassment and assault prevention measures, largely consisting of email bulletins to employees. In February 2015, Rear Admiral David Score, then Director of OMAO and the NOAA Corps sent an all-hands email to all OMAO employees with an attached policy statement on non-discrimination and equal employment opportunity that stated harassment in any form is unacceptable and that OMAO has a zero tolerance policy against any unlawful discrimination or sexual harassment.<sup>41</sup> Rear Admiral (lower half) Anita Lopez, Deputy Director for Operations

---

<sup>37</sup> 46 U.S. Code § 7703

<sup>38</sup> Misconduct, 46 C.F.R. § 5.27 (2009)

<sup>39</sup> Matt Woodruff, “Sexual harassment may cost you your license,” *Workboat Magazine*, July 26, 2012.

<sup>40</sup> Acts or offenses for which revocation of credentials is sought, 46 C.F.R. § 5.61 (2009)

<sup>41</sup> David A. Score, “2015 Director’s Policy Statement on Discrimination and Equal Employment Opportunity,” February 10, 2015.

also sent an all-hands email later that month, instructing all commands to publicly post the policy statement, and also gave instruction for each crewmember aboard ships to watch a training video entitled “Sexual Harassment Prevention for the Maritime Industry” produced by the Maritime Training Service.<sup>42</sup> Rear Admiral Lopez’s email also instructed commands to incorporate this video into pre-departure safety briefings to science parties, and for Marine Operations to track this requirement and provide a report to her twice each year.

In April 2016, OMAO leadership became aware of longstanding allegations of sexual harassment by employees of NOAA’s National Marine Fisheries Service (NMFS) aboard NOAA ships. These allegations were first reported to NMFS and NOAA’s Workforce Management Office in 2013, and no action was taken following an investigation by Workforce Management, and was not immediately communicated to OMAO.

Rear Admiral Score announced an OMAO-wide stand down in September and October of 2016 through an all-hands email to focus attention on issues of sexual assault, sexual harassment, bullying, and other unacceptable behaviors.<sup>43</sup> These stand downs consisted of four-hour group training and discussion groups. Also in October 2016, OMAO hired an equal employment opportunity (EEO) and diversity and inclusion manager to serve as a point of contact for equal employment issues, including sexual

---

[https://www.oma.noaa.gov/sites/default/files/documents/OMAO\\_Policy\\_Non-Discrimination\\_and\\_%20EEO\\_2015.pdf](https://www.oma.noaa.gov/sites/default/files/documents/OMAO_Policy_Non-Discrimination_and_%20EEO_2015.pdf)

<sup>42</sup> Anita L. Lopez, “Equal Employment Opportunity and Prevention of Sexual Harassment,” email message to all Marine Operations personnel, February 25, 2015.

<sup>43</sup> David A. Score, “Director’s Message – OMAO Sexual Assault / Sexual Harassment Stand Down,” email message to all OMAO personnel, September 16, 2016.



harassment.<sup>44</sup> Rear Admiral Score sent another all-hands email in early 2017 reminding employees of the “955” reporting process, and to contact the EEO and Diversity and Inclusion manager.<sup>45</sup> Another reminder email was sent two months later.<sup>46</sup>

In coordination with the NOAA Civil Rights Office, OMAO led procurement of the NOAA Sexual Assault/Sexual Harassment (SASH) Helpline, a crisis support service for NOAA employees, contractors, and affiliates who have experienced sexual assault and/or harassment. Operated by the Rape, Abuse, and Incest National Network, this service was launched in December 2016, providing crisis intervention, referrals, and emotional support on an anonymous basis. The SASH Helpline consists of a toll-free phone number, a website with online chat, a mobile app, and text message services for employees to connect with support specialists. This resource was announced to employees by an all-hands email from Dr. Kathryn D. Sullivan, then Under Secretary of Commerce on December 22, 2016, one day before enactment of the legal requirement for NOAA to do so, and fulfills that legal requirement, and may also fulfill the requirement for establishment of a victim advocacy program. The SASH Helpline does not report allegations of harassment or assault to NOAA, the Department of Commerce, or law enforcement.

The Secretary of Commerce is past due on delivery of a comprehensive policy on prevention of sexual assault as required by law. The Department of Commerce’s existing policy on discipline, last updated in 1980, contains no provisions specific to sexual

---

<sup>44</sup> David A. Score, “Director’s Message – Introducing OMAO’s EEO and Diversity and Inclusion Manager,” email message to all OMAO personnel, October 4, 2016.

<sup>45</sup> David A. Score, “Director’s Message – Reporting Cases of Sexual Harassment and Assault,” email message to all OMAO personnel, February 17, 2017.

<sup>46</sup> David A. Score, “Director’s Message – Sexual Assault Awareness and Prevention Month,” email message to all OMAO personnel, April 19, 2017.

harassment, but does provide penalties for harassment as a result of a grievance as well as for discrimination based on sex.<sup>47</sup> Both of these offenses can result in a penalty of five days suspension to removal for the first offense, 30 days suspension to removal for the second, and removal for the third offense. For comparison, the same administrative order requires mandatory suspension of 30 days to removal for using a government motor vehicle for other than official purposes.

### POLICY PROPOSAL

This proposal will reduce incidence of sexual harassment and sexual assault on NOAA ships in two ways: by partnering with the U.S. Coast Guard to prioritize and execute investigations of allegations of sexual harassment and assault on NOAA ships and to take punitive action against merchant mariner credentials and licenses of perpetrators when allegations are substantiated. This proposal will leverage the abilities and authority of an existing investigative service within the U.S. Coast Guard, reducing the administrative cost of investigations to NOAA. This proposal will also provide a more effective deterrent to harassing behaviors by including harassment as a revocable offense that would prevent mariners guilty of harassment and assault from legally working in the maritime industry.

In order to accomplish this, Congress must pass legislation authorizing and directing the U.S. Coast Guard Investigative Service (CGIS) to provide investigative services to NOAA on a reimbursable basis to investigate allegations of sexual harassment and assault. The Economy Act of 1932 permits federal agencies to purchase services

---

<sup>47</sup> U.S. Department of Commerce, “Discipline, Department Administrative Order 202-751, Appendix B,” [http://osec.doc.gov/opog/dmp/daos/dao202\\_751.html](http://osec.doc.gov/opog/dmp/daos/dao202_751.html). Effective August 4, 1980.

from other federal agencies if the services cannot be provided from the private sector as conveniently or cheaply.<sup>48</sup> The CGIS is a federal investigative program and law enforcement agency comprised of approximately 90 active duty military and civilian special agents and 150 Coast Guard Reserve special agents that conduct professional criminal investigations.<sup>49</sup> NOAA, specifically OMAO, and CGIS would also enter into a memorandum of understanding (MOU) outlining the agreed upon terms of providing such service. This MOU could be framed similar to the existing officer exchange MOU developed in 2014 and signed by your predecessor, RADM Score, that allows exchange of personnel between the two services for the purpose of sharing professional knowledge, expertise, doctrine, and professional development.<sup>50</sup> Funding for this service would be authorized from OMAO's existing operating funds, and require no increases in appropriations for NOAA or CGIS.

The second component of this proposal would legislatively direct the Coast Guard to review and revise 5 C.F.R. § 5.61 to include “sexual harassment or hostile work environment” or similar language that it finds enforceable into the list of acts or offenses for which revocation of credentials is sought. This would necessarily broadly apply to all mariners credentialed and licensed in the United States, and this authorizing legislation may be accompanied by a statement describing that it is the sense of Congress that sexual harassment and hostile workplace environments in the maritime industry are a serious or grave concern and damaging to the nation's merchant marine capabilities.

---

<sup>48</sup> 31 U.S. Code § 1535

<sup>49</sup> Homeland Security Digital Library, “United States Coast Guard Investigative Service,” <https://www.hsdl.org/?abstract&did=36151>. (Accessed February 17, 2018).

<sup>50</sup> Memorandum of Understanding No. 14-224: USCG and NOAA Corps Officer Exchange, October 8, 2014.

CGIS derives its authority from Title 14 of the United States Code, which authorizes CGIS agents to conduct investigations, carry firearms, execute and serve warrants, and make arrests.<sup>51</sup> The Coast Guard Commandant's most recent instruction for CGIS roles and responsibilities does not authorize CGIS to investigate alleged sexual harassment or hostile workplace allegations unless the servicing legal office determines that a criminal offense may also have occurred.<sup>52</sup>

The Coast Guard authorization may also be used to direct the Coast Guard to add harassment to the list of offenses under 46 CFR 5.61 for which an investigating officer may seek revocation of a merchant mariner credential. This proposal will require both NOAA and the Coast Guard to provide technical drafting assistance to the Senate Committee on Commerce, Science, and Transportation, which has jurisdiction over both NOAA and the Coast Guard, and leads the annual Coast Guard reauthorization.

The Coast Guard's biannual reauthorization, often reforms Coast Guard authorities to improve administration. It is common for the reauthorization legislation to contain titles and provisions relevant to NOAA and the NOAA Corps. Senate Bill 1129, the Coast Guard Authorization Act of 2017,<sup>53</sup> was reported on June 5, 2017, but not yet received time for debate on the Senate floor and may still be amended. While changing the list of revocable offenses to include harassment may supersede the Commandant's instruction to not investigate cases of harassment unless another crime has been committed, the Coast Guard reauthorization may additionally be used as a vehicle to specifically direct the Commandant of the Coast Guard to revise instructions on CGIS's

---

<sup>51</sup> 14 U.S. Code § 95

<sup>52</sup> Commandant, United States Coast Guard, Commandant Instruction 5520.5F, Coast Guard Investigative Service Roles and Responsibilities, November 30, 2011.

<sup>53</sup> Coast Guard Authorization Act of 2017, S. 1129, 115<sup>th</sup> Cong., 1<sup>st</sup> sess. (2017).

authority to investigate allegations of sexual harassment and hostile workplace environments by removing the provision for such investigations to also be coupled to another criminal offense. Given that the full scope of incidence of harassment in the private maritime sector is not well understood, it is unknown what administrative cost, if any, a requirement to investigate harassment allegations would impose on CGIS.

### POLICY ANALYSIS

This policy proposal comes in two parts: revising the underlying legal ability to revoke a mariner's credential, and a mechanism to investigate harassment and assault allegations specific to NOAA. Each part is analyzed separately.

#### ***Punitive Action Against Merchant Mariner Credentials***

Employment in the maritime industry differs from employment on aircraft and trains due to the inherent nature of the mode of transportation: mariners must live at their workplace for extended periods and may not be able to remove themselves from the situation the same day as the occurrence of harassment or assault. This proposed policy acknowledges this inherent difference and would make the maritime sector the first among the federally regulated transportation license authorities to implement such regulations. Among other professions regulated by licensure, such as law and medicine, regulatory bodies have implemented mixed rules on sexual misconduct as a revocable offense, with mixed reports of its effectiveness as a deterrent.

Among state regulated professional certification bodies, there is ample precedence for suspension or revocation of licenses for sexual harassment and sexual misconduct, though the effectiveness of its implementation is debatable. For example, in 2016, the

American Bar Association, which formulates model ethical codes for legal professionals, added a provision to its model rules to include harassment (including on the basis of sex) in the definition of professional misconduct.<sup>54</sup> Prior to this, nearly two dozen state bars and the District of Columbia already had similar rules.<sup>55</sup> This was not without controversy, however, as the state legislatures of Montana, Illinois, South Carolina, Nevada, and Utah rejected adoption of this rule citing First Amendment concerns.<sup>56,57</sup>

In the arena of licensing medical professionals, state medical boards are responsible for disciplining professionals, and all state boards have rules against sexual misconduct, though enforcement may vary. A comprehensive review of all reported cases of sexual misconduct by physicians to the National Practitioner Data Bank for Sexual Misconduct from 2003 to 2013 revealed that 70 percent of physicians were not disciplined by state medical boards for their behavior, but of those that are, 89 percent of cases result in revocation, suspension, or restriction of the medical license.<sup>58</sup>

A compelling argument against revocation of professional licenses for sexual harassment or assault is that it may circumvent due process. The United States Supreme

---

<sup>54</sup> American Bar Association, Model Rule 8.4g Misconduct, [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_8\\_4\\_misconduct.html](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct.html)

<sup>55</sup> Elizabeth Olson, “Goodbye to ‘Honeys’ in Court, by Vote of American Bar Association,” The New York Times, August 9, 2016, sec. DealBook, <https://www.nytimes.com/2016/08/10/business/dealbook/aba-prohibits-sexual-harassment-joining-many-state-bars.html>. (Accessed March 3, 2018).

<sup>56</sup> A. B. A. Journal, “States Split on New ABA Model Rule Limiting Harassing or Discriminatory Conduct,” ABA Journal, October 2017, [http://www.abajournal.com/magazine/article/ethics\\_model\\_rule\\_harassing\\_conduct/](http://www.abajournal.com/magazine/article/ethics_model_rule_harassing_conduct/). (Accessed March 3, 2018).

<sup>57</sup> Eugene Volokh, “Opinion | Montana Legislature Expresses Opposition to ABA-Proposed Lawyer Speech Code,” *Washington Post*, April 12, 2017, sec. The Volokh Conspiracy Opinion, <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/04/12/montana-legislature-expresses-opposition-to-aba-proposed-lawyer-speech-code/>. (Accessed March 3, 2018).

<sup>58</sup> Azza AbuDagga et al., “Cross-Sectional Analysis of the 1039 U.S. Physicians Reported to the National Practitioner Data Bank for Sexual Misconduct, 2003–2013,” *PLoS ONE* 11, no. 2 (February 3, 2016): 1–13, <https://doi.org/10.1371/journal.pone.0147800>.

Court has considered a professional license as a property right that cannot be taken away without due process of law.<sup>59</sup> Challenges to due process, though, are largely related to revocation of licenses for civil actions unrelated to actual job performance, such as unpaid student loans or child support.<sup>60</sup>

Cases of alleged sexual harassment that result in a hostile work environment are more difficult to prove than those that result in adverse employment action, as there may be no tangible record, and some harassing behaviors are defined by social context that may be understood differently between the claimant and the accused, such as a perceived leer.<sup>61</sup> These cases require a demonstrated pattern of harassment, and multiple witness accounts may be needed to bolster the claim. Allegations of sexual assault, being physical in nature, provide significantly more prosecutable evidence that can be evaluated by medical professionals if reported and examined in time.

False allegations of harassment or assault may be knowingly fabricated by a claimant for the perceived negative consequences that the alleged perpetrator would experience.<sup>62</sup> Under this proposed policy, it could be possible for a shipboard employee to falsely allege sexual harassment against a shipmate in order to damage their employment status or professional reputation, but this could be mitigated by a thorough and standardized investigation process that protects the accused's privacy. An internal harassment prevention policy that would provide the complainant or the accused the

---

<sup>59</sup> *Goldberg v. Kelly*, 397 U.S. 262 n.8 (1978).

<sup>60</sup> Carolyn R. Cody, "Professional Licenses and Substantive Due Process: Can States Compel Physicians to Provide Their Services," *Wm. & Mary Bill Rts. J.* 22 (2013): 941.

<sup>61</sup> William O'Donohue and Adrian H. Bowers, "Pathways to False Allegations of Sexual Harassment," *Journal of Investigative Psychology and Offender Profiling* 3, no. 1 (January 2006): 47–74, <https://doi.org/10.1002/jip.43>.

<sup>62</sup> Jessica Engle and William O'Donohue, "Pathways to False Allegations of Sexual Assault," *Journal of Forensic Psychology Practice* 12, no. 2 (March 2012): 97–123, <https://doi.org/10.1080/15228932.2012.650071>.

option to be temporarily transferred to another ship or worksite while the allegations are investigated would provide a buffer or cooling off period that may, in whole or in part, satisfy a claimant's desire to be away from a coworker they simply do not like. Indeed, such a policy is required by the Sexual Harassment and Assault Prevention at the National Oceanic and Atmospheric Administration law, and expected to be implemented soon through a NOAA Administrative Order.

Within the scope of NOAA's marine operations, a shortcoming of this policy is that it only applies to wage mariners, which make up about 85 percent of a NOAA ship's operations crew,<sup>63</sup> not including the ships' scientific complements. NOAA Corps officers, while on a ship, only work in the ship's bridge and, as commissioned officers, are not required to hold or maintain merchant marine licenses to perform their duties, and so would not be subject to this specific punitive action. Some NOAA Corps officers do hold merchant mariner credentials or licenses, but the U.S. Coast Guard cannot take punitive action taken against their credentials for any action occurring while sailing on a NOAA ship, as it is not a requirement of employment. According to OMAO, about 13 percent of known reported cases of harassment and assault are allegedly perpetrated by NOAA Corps officers,<sup>64</sup> which is generally close to the proportion of crew who are commissioned officers (15 percent). Sexual harassment, but not assault, is listed in the NOAA Corps Directives as an example of conduct unbecoming an officer, for which the penalty may be dismissal, suspension from duty at reduced rank, or reduction in lineal

---

<sup>63</sup> Based on an estimation of 100 NOAA Corps active shipboard billets and 588 wage mariner billets.

<sup>64</sup> Gregory Raymond, Chief of Staff, NOAA Office of Marine and Aviation Operations, personal communication, March 4, 2018.



rank or pay grade.<sup>65</sup> The NOAA Corps Directives are unclear on how allegations against NOAA Corps officers should be investigated or substantiated, and leave discretion to you as Director.

Additionally, this policy does not apply to technicians, scientists, volunteers, or interns who carry out data collection mission objectives and are not licensed mariners. These employees and affiliates will presumably be addressed in NOAA's upcoming harassment policy required by law.

### ***Investigations by the U.S. Coast Guard Investigative Service***

OMAO has previously referred cases of harassment and assault to CGIS, but for several reasons found it more expeditious to hire outside investigative services from the private sector. This is likely due to the limited authority, funding, and manpower for CGIS to conduct such investigations on behalf of NOAA. CGIS possesses the capability, but not the capacity or directive to prioritize and carry out such investigations.

According to the DHS Office of Inspector General, during the period encompassing Fiscal years 2014 through the second quarter of Fiscal Year 2016, CGIS received 15 allegations of harassment from the Coast Guard, comprising about six percent of all "miscellaneous" complaints received during that period.<sup>66</sup> Miscellaneous complaints comprised 67 percent of all investigations, with other investigation areas covering program fraud, civil rights and civil liberties, and employee corruption. OMAO

---

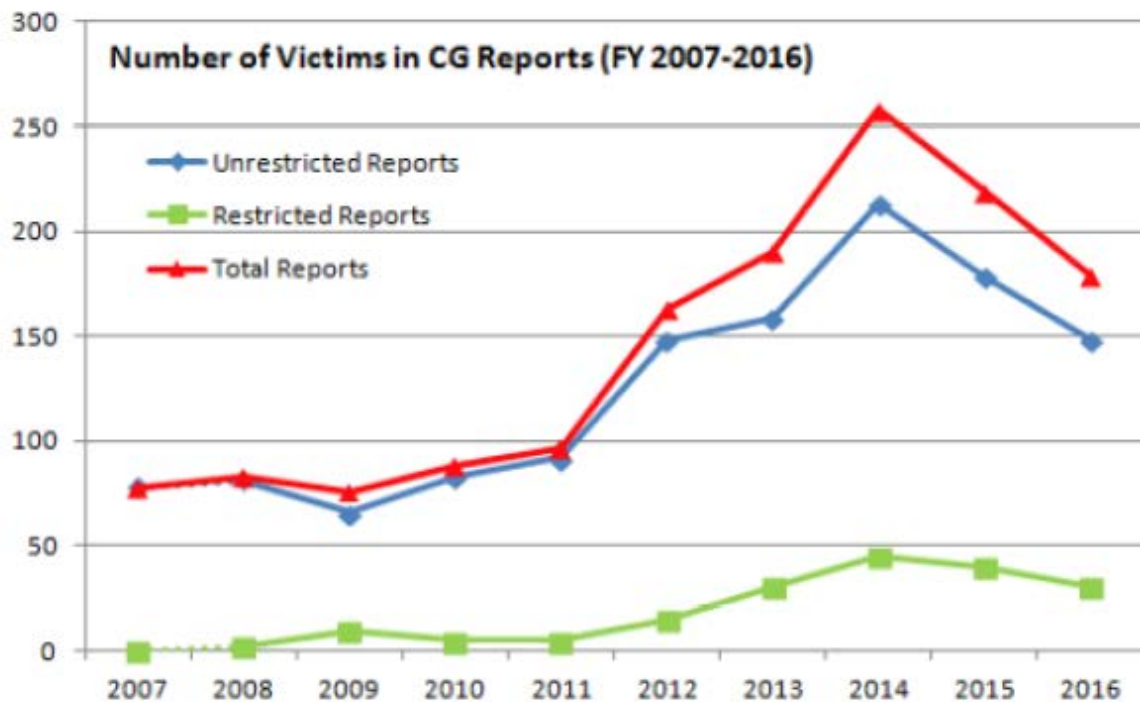
<sup>65</sup> U.S. Department of Commerce, NOAA, *NOAA Commissioned Corps Directives*, Chapter 7 – Discipline, §§ 07402 and 07408.

<sup>66</sup> Department of Homeland Security Office of Inspector General, *Oversight Review of the United States Coast Guard Investigative Service*, OIG-17-74-IQO, June 23, 2017. Available at <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-74-IQO-Jun17.pdf>.

recorded 15 cases of harassment on NOAA ships in the second half of 2017 (7.5 cases per quarter), which, if added to CGIS's reported load of 15 cases in two and a half years (1.5 cases per quarter), would significantly add to CGIS's harassment case load by 500 percent. However, in a report to Congress, the Coast Guard reported tracking 179 victims of assault in 2016 (see Figure 1).<sup>67</sup> Clearly there is a disparity in these reports of CGIS's conducting investigations of harassment and assault internally. With this in mind, it is unlikely that adding OMAO's cases to CGIS's load would be administratively burdensome to CGIS or increase the marginal cost of investigating each case, especially if services were reimbursed. While we do not have specific figures on CGIS's budget allocated for harassment or assault investigations, it is likely to be significantly less than the cost of a recent investigation for a single case conducted by a private investigator for NOAA of \$175,000.

---

<sup>67</sup> Department of Homeland Security, U.S. Coast Guard, *Sexual Assault in the U.S. Coast Guard (FY 2016)*, Report to Congress, April 21, 2017. Available at <http://www.dcms.uscg.mil/Portals/10/CG-1/cg111/docs/SAPR/Sexual-Assault-in-the-US.pdf?ver=2017-06-26-120832-480>.



**Figure 1. Number of Victims of Sexual Assault in the Coast Guard.**<sup>68</sup>

NOAA and the Coast Guard have a history of collaboration. NOAA Corps officers have worn a variant of the Coast Guard Operational Dress Uniform since 2008. NOAA ships routinely use Coast Guard piers, and one NOAA ship is permanently homeported at a joint Navy-Coast Guard facility in Newport, Rhode Island. Since 2013, the NOAA Corps Officer Training Center has been co-located at the U.S. Coast Guard Academy, where NOAA's officer candidates train alongside Coast Guard officer candidates attending the Coast Guard's Officer Candidate School. While leveraging the Coast Guard's infrastructure and facilities has benefitted NOAA, who often lacks the

<sup>68</sup> *Ibid.* Unrestricted reports are those where a victim discloses that he or she is the victim of a sexual assault without requesting confidentiality or restricted reporting, and is provided to CGIS to initiate an official investigation. Restricted reports are those where a victim discloses that he or she is the victim of a sexual assault on a confidential basis.

purchasing power to cover overhead costs of proprietary facilities, it has also benefitted the Coast Guard by allowing them to demonstrate that their facilities and services are of such quality that they are sought after by other agencies.

An additional collaborative endeavor between CGIS and NOAA would similarly allow the Coast Guard to demonstrate to Congress and the public the value of their investigative capacity, while allowing NOAA to demonstrate having taken serious action to combat sexual harassment and assault. Further, conducting investigations through an existing federal law enforcement body provides greater credence to the perception of due process should results of an investigation leading to revocation of a mariner's credentials be challenged.

If implemented, NOAA would effectively surrender the ability to specifically direct how investigations are conducted to CGIS. When purchasing investigative services from the private sector, NOAA can specify in the contract how the investigation should be conducted, evaluate the quality of investigations performed from one vendor, and use this to inform choices of vendors for future investigations. While this policy need not preclude NOAA from purchasing investigative services from the private sector in addition to purchasing services from CGIS, it is not likely to be economically feasible to do so. It would likely take multiple budget cycles to evaluate the efficacy of such an arrangement. Should CGIS's quality or timeliness in carrying out investigations not meet NOAA's standards, NOAA would have little recourse in recovering funds from CGIS. However, MOUs entered into pursuant to the Economy Act are typically easy to terminate.

## POLITICAL ANALYSIS

### *Public Opinion*

Public awareness of workplace sexual harassment and assault is in the midst of a watershed moment. The “Me Too” movement, which started in 2006, picked up in popularity in October 2017 when actress Alyssa Milano, in a tweet, encouraged people to share experiences of sexual harassment and assault by saying, “me too,” spawning use of the hashtag #MeToo with hundreds of thousands of social media users sharing personal examples within hours.<sup>69</sup> Earlier that month, film producer Harvey Weinstein was publicly accused of numerous accounts of sexual harassment and assault, which was covered extensively in national media.<sup>70</sup>

In the following months, several high profile celebrities and politicians were publicly accused and subsequently held accountable for allegations of sexual harassment and assault or other sexual misconduct, notably U.S. Gymnastics team doctor Lawrence Nassar, U.S. Senate Republican candidate Roy Moore, Senator Al Franken, and NBC journalist Matt Lauer, among many other examples.<sup>71</sup> Nassar received a prison sentence, Moore lost what should have been an easy GOP win for a Senate seat, Franken resigned, and Lauer was fired from NBC, with several other public personalities also losing jobs or resigning over similar allegations.

An October 2017 poll by the Washington Post and ABC News reported that 64 percent of Americans feel that workplace sexual harassment is a serious problem,

---

<sup>69</sup> Christen A. Johnson and KT Hawbaker, “#MeToo: A Timeline of Events,” *Chicago Tribune*, March 13, 2018. Accessed March 17, 2018, <http://www.chicagotribune.com/lifestyles/ct-me-too-timeline-20171208-htmlstory.html>.

<sup>70</sup> Jodi Kantor and Megan Twohey, “Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades,” *The New York Times*, October 5, 2017. Accessed March 17, 2018, <https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html>.

<sup>71</sup> Johnson and Hawbaker, “# MeToo: A Timeline of Events”

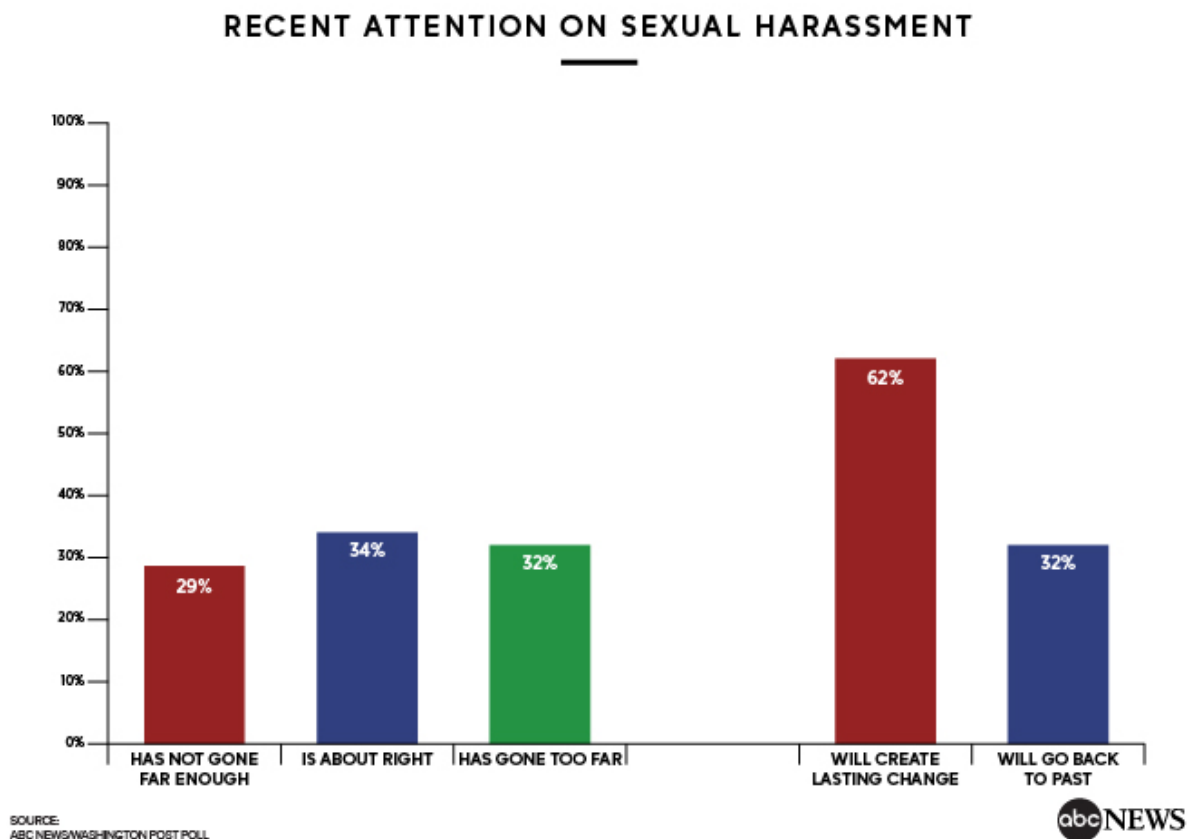
compared to 47 percent in 2011.<sup>72</sup> A following poll by the Washington Post and ABC News in January 2018 showed a dramatic surge to 83 percent of Americans feeling that sexual harassment in the workplace is a serious problem, with the rate of men viewing it as a problem rising at twice the rate of women, though still slightly lower than women overall.<sup>73</sup> The same poll found that 62 percent of Americans think that the recent public attention will create lasting change, and that about two thirds of Americans think attention is either at an appropriate level or could go farther. A December 2017 poll conducted by National Public Radio and Ipsos reported that 86 percent of Americans support a zero-tolerance policy for sexual harassment as essential to bringing about change in society.<sup>74</sup>

---

<sup>72</sup> Caitlin Gibson and Emily Guskin, "A Majority of Americans Now Say That Sexual Harassment Is a 'Serious Problem,'" *Washington Post*, October 17, 2017. Accessed March 17, 2018, [https://www.washingtonpost.com/lifestyle/style/a-majority-of-americans-now-say-that-sexual-harassment-is-a-serious-problem/2017/10/16/707e6b74-b290-11e7-9e58-e6288544af98\\_story.html](https://www.washingtonpost.com/lifestyle/style/a-majority-of-americans-now-say-that-sexual-harassment-is-a-serious-problem/2017/10/16/707e6b74-b290-11e7-9e58-e6288544af98_story.html).

<sup>73</sup> ABC News, "6 in 10 Have Hope for Lasting Change on Sexual Harassment (POLL)," ABC News, January 24, 2018. Accessed March 17, 2018. <http://abcnews.go.com/Politics/ten-hope-lasting-change-sexual-harassment/story?id=52550296>.

<sup>74</sup> National Public Radio, "Poll: Americans Overwhelmingly Support 'Zero Tolerance' On Sexual Harassment," NPR.org, December 14, 2017. Accessed March 17, 2018, <https://www.npr.org/2017/12/14/570601136/poll-sexual-harassment-ipsos>.



**Figure 2. Public Opinion on Recent Attention to Sexual Harassment<sup>75</sup>**

### *Congressional Support*

Though a few individual members of Congress have been harangued for alleged workplace harassment, Congress, especially the Senate Committee on Commerce, Science, and Transportation, which has jurisdiction over the Department of Commerce, NOAA, and the Coast Guard, has demonstrated bipartisan support for tackling sexual misconduct and abuse issues.

---

<sup>75</sup> ABC News, “6 in 10 Have Hope for Lasting Change on Sexual Harassment (POLL)”

In addition to the legislative requirement championed by the Committee to require NOAA to develop a sexual harassment policy, Committee Chairman John Thune (R-SD) introduced the United States Center for Safe Sports Authorization Act of 2017, later added to Senator Dianne Feinstein's (D-CA) Protecting Young Victims from Sexual Abuse Act, to help prevent sexual abuse of amateur athletes.<sup>76</sup> Chairman Thune also introduced with bipartisan support the aforementioned No Human Trafficking on Our Roads Act to disqualify commercial truck drivers involved in human trafficking from operating commercial vehicles.

While the bipartisan Committee is generally supportive of such measures, members may wish to hold off on any new legislation pertinent to sexual harassment and assault within NOAA until the results of 2016's legislation can be fully executed and analyzed. If this is the case, focusing on the aspects of this policy pertaining to assault and waiting on those pertaining to harassment may have a better chance of favorable Committee attention in the short term.

### ***Labor Unions and Employees***

While recent attention to workplace sexual misconduct has contributed to overwhelming public support for policies that would impose stiff penalties and societal change at large, we should expect significant pushback on these proposed policies, particularly from the merchant marine community. Following MARAD's temporary suspension of the USMMA's Sea Year program in 2016 in response to allegations of harassment and assault of cadets on commercial vessels, the USMMA Alumni

---

<sup>76</sup> *Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017*, Public Law 115-126, (2017).



Association waged a public relations campaign against the Department of Transportation for what they perceived as a move to hide poor leadership at the USMMA, and claiming that the survey data MARAD used in its decision was flawed.<sup>77,78</sup>

The Sea Year suspension was similarly criticized by merchant marine labor unions. The presidents of four unions, the American Maritime Officers (AMO), the Marine Engineers' Beneficial Association (MEBA), the International Organization of Masters, Mates, and Pilots (MMP), and the Seafarers International Union (SIU) published a five-page open letter to DOT Secretary Anthony Foxx condemning the decision in September 2016.<sup>79</sup>

Though impossible to definitively prove, these negative responses by the Alumni Association and labor unions may have been born out of both embarrassment for their alma mater, and from business ties of Alumni Association members with the shipping companies who host USMMA cadets. NOAA's wage mariners are covered by collective bargaining agreements with MEBA, MMP, and SIU, and any policy change that could affect employment status of wage mariners should reasonably be expected to be met with similar opposition by the unions whose goals are to demonstrate their value to existing and potential dues-paying members.

---

<sup>77</sup> Lisa Rein, "Sexual Misconduct Has Started a Civil War at This Federal Service Academy," *Washington Post*, July 18, 2016. Accessed March 17, 2018. <https://www.washingtonpost.com/news/powerpost/wp/2016/11/01/sexual-misconduct-has-started-a-civil-war-at-this-federal-service-academy/>.

<sup>78</sup> "New Review Finds Flaws in USMMA Harassment Surveys," *The Maritime Executive*, December 8, 2016. Accessed March 17, 2018. <https://www.maritime-executive.com/article/new-review-finds-flaw-in-usmma-harassment-surveys>.

<sup>79</sup> Paul Doell, Marshall Ainley, Donald Marcus, and Michael Sacco, "DOT-MARAD sexual assault response strategy 'dangerously off course,'" Letter to Anthony Foxx, Secretary, U.S. Department of Transportation, September 6, 2016. <http://www.amo-union.org/documents/9-6-16-UnionLetter.pdf>.

As part of a broader cultural change, messaging of this policy to labor unions should reinforce that it helps remove bad actors and may help them gain female members at rates more consistent with other traditionally male-dominated industries that are becoming more balanced. Renegotiation of collective bargaining agreements with these labor unions over other issues has in the past been slow, but there is little risk of failure to reach agreement or a strike by members.

### RECOMMENDATION

While it is NOAA's goal for our fleet to remain the at-sea observation platform of choice for NOAA's research and survey programs, they are under no obligation to use our vessels if others can be chartered from the private sector. Programs that use NOAA ships as platforms for research and operations will not tolerate further loss of allocated days at sea, and additional harassment and assault prevention and response actions are required to achieve full utilization of the fleet. Additional harassment and assault prevention and response enforcement measures are required to achieve full utilization of the fleet, in addition to providing a safe platform for the world's leading researchers. I recommend that you first discuss the potential mechanics of implementation options with CGIS, then offer technical drafting assistance to the Committee on Commerce, Science, and Transportation when asked for recommendations during follow-up briefings to the Committee on implementation of the Sexual Harassment and Assault Prevention at NOAA Subtitle.

As the world's largest research fleet, NOAA's fleet, and its crews, are in a position of being publicly accountable without some of the administrative authorities to enforce and deter bad behavior that are enjoyed by other U.S. government-operated

fleets, such as the Uniform Code of Military Justice. Given our unique at-sea research and survey missions, each crew member brings valuable skills that cannot be easily augmented by a revolving door of average mariners from the merchant fleet.

If enacted, this policy would make NOAA a leader in combating sexual harassment and assault in the maritime community, in addition to making the maritime community a leader among federally regulated transportation sectors. It would send a strong message to the oceanographic research community that our fleet takes this issue more seriously than smaller for-hire operations, maintaining NOAA's goal of remaining the platform of choice in a time when workplace harassment and assault are nationwide concerns and discussed more openly than ever.

Partnering with the Coast Guard provides greater legitimacy by demonstrating that we alone cannot handle the problem, and want to work with one of our closest federal partners to achieve the goal. Similar to how our mutually beneficial joint Coast Guard-NOAA officer training allows us to leverage existing Coast Guard capabilities, it also allows the Coast Guard to demonstrate to their stakeholders that their services are sought after by other federal agencies. However, given that CGIS's existing policy is not to investigate internal cases of harassment unless tied to another crime, I recommend that you discuss with CGIS first to obtain buy-in before working toward legislative direction. I recommend that you push hardest for collaboration on sexual assault investigation, and be willing to delay partnership on harassment investigation.

Revoking mariner credentials and effectively barring them from working in the industry is a dramatic move, but a dramatic deterrent is necessary in the unique maritime environment where victims are forced to live with their abusers. NOAA's forthcoming

policy, required by the Sexual Harassment and Assault Prevention at the National Oceanic and Atmospheric Administration law will provide positive, proactive measures that support victims, and this proposed policy will be the backstop enforcement measure to be used when those prevention measures have failed. Among NOAA at large, OMAO's missions are often the most difficult, demanding, and least glamorous, which we gladly accept as a condition of uniformed service. The unpleasant task of taking care of bad actors should be no exception, and we must be willing to take what may initially be a politically challenging position for some employees for the benefit of others and the American maritime industry at large.

## CURRICULUM VITAE

Zachary Cress is a native of Dallas, Texas, and currently resides in Washington, D.C. He is an officer of the National Oceanic and Atmospheric Administration Commissioned Officer Corps, currently on detail to the professional staff of the U.S. Senate Committee on Commerce, Science, and Transportation. He has completed two sea tours aboard NOAA ships in addition to several shore-side staff positions with NOAA's National Marine Fisheries Service, Office of Marine and Aviation Operations, and Office of the Under Secretary. He is a licensed mariner, holding a U.S. Coast Guard license as Mate, 1,600 Gross Register Tons Upon Oceans. He holds a Bachelor of Arts degree in biology and Master of Science degree in zoology from Texas A&M University.